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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA
AND ALL FORMS OF DISCRIMINATION**

Written statement submitted by the Aboriginal and Torres Strait Islander Commission,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[23 December 1999]

1. Racial discrimination continues to have a profound impact on the lives of indigenous peoples all over the world. Not only are there lasting effects of historical racism arising from colonization, but racial discrimination against indigenous peoples continues as a powerful force in contemporary societies.
2. The recognition of the distinct rights of indigenous peoples is essential to the eradication of racism and the full and equal enjoyment of our human rights.
3. The full enjoyment of human rights, however, requires commitment and effort on the part of all Governments. Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination is very clear on the obligations of States: "States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms" However, the existence of obligations, legislative measures and diplomatic assurances alone does not ensure the enjoyment of rights in practice. The reality is that indigenous peoples in all parts of the world, both in the North and the South, continue to suffer gross and systematic violations of their human rights. The situation for indigenous peoples in Australia is no different from that of our brothers and sisters around the world.
4. Racism continues as a powerful force in the Australian community. Racism in Australia is not merely confined to acts of isolated vilification but pervades our political and legal institutions. Not only do Aboriginal and Torres Strait Islander peoples face disadvantage in relation to the provision of basic services, but we also face serious impediments to the full enjoyment of our social and cultural rights. This experience of racism is the product of a history of colonization which removed people from their land and sought to destroy Aboriginal and Torres Strait cultures and communities. In addition to this legacy, there is a continuing refusal to recognize indigenous peoples as distinct "peoples" and the original owners of their lands and resources.
5. This history and perpetuation of racism in Australia has a significant impact on the daily lives of Aboriginal and Torres Strait Islander peoples. The life expectancy of indigenous peoples in Australia is almost 20 years less than that of non-indigenous Australians. Indigenous people account for 31 per cent of all Australians who live in "improvised dwellings", a category largely equivalent to homelessness. We are less likely to be in full-time education than non-indigenous Australians. In 1996, the indigenous unemployment rate in Australia was more than double that of the non-indigenous population. It is not surprising, given poor health and educational outcomes and thus poor employment outcomes for indigenous Australians, that personal income levels are also far below those recorded for non-indigenous Australians.¹
6. In the past decade a number of national investigations and reports have clearly identified the impediments faced by indigenous peoples. Whilst these have revealed situations of profound discrimination and suffering they have also presented significant opportunities for the Government and the broader community to redress past injustices and to take positive measures to recognize the distinct rights of indigenous peoples in Australia. Whilst some members of the Australian community have taken up this challenge, it is to Australia's shame that Australian governments continue to fail to adopt appropriate special measures to address systematic discrimination against the indigenous population.

Royal Commission

7. The Royal Commission into Aboriginal Deaths in Custody was established in 1987 to inquire into the high level of Aboriginal deaths in police custody in the 1980s. The Royal Commission published a report² in 1991 containing 339 recommendations. These recommendations were aimed at addressing the underlying causes of indigenous disadvantage and at ending discrimination in the justice system. They also recognized the critical role of indigenous self-determination in effecting these changes.
8. The Federal Government and all states and territories expressed support for the recommendations. However, the recommendations have not been successfully implemented, and in fact levels of indigenous imprisonment have increased.
9. Of particular concern is the increasingly high levels of indigenous over-representation in juvenile detention. This was noted in Australia's first report under article 44 (1) of the Convention on the Rights of the Child. In its concluding observations (CRC/C/15/Add.79), the Committee on the Rights of the Child expressed concern about the unjustified, disproportionately high percentage of Aboriginal children in the juvenile justice system. The Committee was particularly concerned about legislation which provides for mandatory detention and punitive measures, resulting in a high percentage of Aboriginal juveniles in detention.
10. Racial discrimination plays a clear role here. The regional variations show how rates of indigenous arrest and detention are reflective of and responsive to the laws and practices applied by the criminal justice system. In Western Australia where indigenous juvenile over-representation is highest, the non-indigenous juvenile incarceration rate is normal and roughly equivalent to the national average.

Stolen generations

11. A survey of indigenous Australians in 1994³ found that 10 per cent of Aboriginal and Torres Strait Islander people over the age of 25 reported being separated and raised in isolation from their families. In response, the national human rights institution, the Human Rights and Equal Opportunity Commission, conducted its "Stolen Generations Inquiry". The Inquiry found⁴ that from about 1946, laws and practices which, for the purpose of eliminating indigenous cultures, promoted the removal of indigenous children for rearing in non-indigenous institutions and households were in breach of the international prohibition of genocide. The inquiry recommended formal recognition and apology, as well as reparation to people removed as children, their families and communities.
12. The Federal Government's response to the report has been a major disappointment to indigenous peoples. Whilst the Prime Minister has expressed deep personal sorrow and has initiated a parliamentary motion expressing regret on behalf of Australians, he and the Government have refused to formally apologize and ruled out the payment of compensation to victims.

Native title

13. In 1993 legislation was enacted in Australia that recognized pre-existing indigenous rights to land (The Native Title Act 1993). Following a further decision of the Australian High Court⁵ which found that the rights of native title-holders and pastoral leaseholders could coexist, the Australian Government responded by enacting the Native Title Amendment Act 1998. This Act substantially alters the original provisions of the 1993 Native Title Act, repudiates the accord reached with indigenous representatives prior to the enactment of the NTA and effects a serious diminution of native title rights.

14. The Committee on the Elimination of Racial Discrimination (CERD) has considered the Native Title Amendment Act 1998 and subsequently adopted a decision at its fifty-fourth session under its early warning procedure which found that "within the broad range of discriminatory practices that have long been directed against Australia's Aboriginal and Torres Strait Islander peoples, the effects of Australia's racially discriminatory land practices have endured as an acute impairment of the rights of Australia's Indigenous communities".⁶ The Committee urged Australia to suspend implementation of the 1998 amendments and to reopen discussions with the representatives of the Aboriginal and Torres Strait Islander peoples with a view to finding solutions acceptable to indigenous peoples and which would comply with Australia's obligations under the Convention. At its fifty-fifth session it adopted a second decision reaffirming the earlier one.⁷

15. The Australian Government has chosen to publicly dismiss the findings of the Committee and to question the Committee's standing and competence. The Prime Minister has categorically stated that the Government has no intention of reopening the debate on Native Title or amending the Native Title Act.

Conclusion

16. There is rhetoric in Australia of commitment to equality for indigenous and non-indigenous Australians. However, the meaning of equality is undermined by a failure to recognize the distinct rights of indigenous peoples and make a concerted effort to redress profound economic and social disadvantage in indigenous communities. The existence of a notion of superficial equality combined with underlying racism has been highlighted by the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Mr. Mick Dodson:

"In my view there has been an insidious, sometimes even unconscious, process of appeal to a notion of equality which denies any rights which attach to cultural differences and, particularly, the identity of Aboriginal and Torres Strait Islander peoples as the Indigenous peoples of this country. The claim to human rights which attach to such identity are regarded, ironically, as racist and discriminatory. Hence we arrive at a situation where 'equality' and 'non-discrimination' are converted into instruments to strip Aboriginal and Torres Strait Islander peoples of appropriate recognition and protection of our rights. In the process grossly racist attitudes find apparent shelter."⁸

17. It is on this basis that the Aboriginal and Torres Strait Islander Commission strongly supports the inclusion of the "Elimination of racial discrimination against indigenous peoples" as

a major focus of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The World Conference is an important platform to address racism against indigenous peoples around the world. It should look for specific programmes of action, practical ideas and resource-backed solutions, which all States should consider in order to restore the rights of indigenous peoples and eliminate racism.

Notes

¹ *Aboriginal and Torres Strait Islander Commission, 1998-99 Annual Report*, Commonwealth of Australia, 1999, pp. 23-27.

² *Royal Commission into Aboriginal Deaths in Custody, National Report*, Volumes 1-5, Canberra, Australian Government Publishing Service, 1991.

³ Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Survey: Detailed Findings*, ABS Catalogue Number 4190.0, ABS, Canberra, 1995.

⁴ Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, Commonwealth of Australia, 1997, p. 275.

⁵ *Wik Peoples v. The State of Queensland* (1996)

⁶ Decision 2 (54) on Australia. See Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 18 (A/54/18), chap. II, sect. A.

⁷ Decision 2 (55) on Australia. *Ibid.*, sect. C.

⁸ Human Rights and Equal Opportunity Commission, *Aboriginal and Torres Strait Islander Social Justice Commissioner, Fourth Report 1996*, Commonwealth of Australia, 1996, pp. 6-7.